

**REGULAR STATE BANKING BOARD MEETING  
HELD BY CONFERENCE CALL  
OFFICE OF THE COMMISSIONER  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
2000 SCHAFFER STREET, SUITE G  
BISMARCK, NORTH DAKOTA**

**July 10, 2008**

The regular meeting of the State Banking Board was held in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota. Chairman Karsky called the meeting to order at 9:02 a.m., Thursday, July 10, 2008, by conference call.

**MEMBERS PRESENT:** Timothy J. Karsky, Chairman (*Office*)  
Nancy Baerwald, Member (*Cando*)  
Ron Braseth, Member (*Mayville*)  
Bill Daniel, Member (*Bismarck*)  
Lorren Henke, Member (*Wishek*)  
Roger Monson, Member (*Finley*)  
Anita Quale, Member (*Watford City*)

**MEMBERS ABSENT:** None

**ALSO PRESENT:** Robert J. Entringer, Secretary (*Office*)  
Aaron Webb, Assistant Attorney General (*Office*)  
Tom Stennes (*Harwood*)

**APPROVAL OF MINUTES**

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on May 8, 2008.

**It was moved by Member Monson, seconded by Member Braseth, and unanimously carried, to approve the minutes as presented.**

## **CSBS ANNUAL MEETING AND CONFERENCE**

Chairman Karsky thanked everyone that supported him, along with those that attended the CSBS Annual Meeting and Conference at which he was installed as Chairman of the Board of Conference of State Bank Supervisors.

## **ARTICLES OF AMENDMENT FOR PERPETUAL EXISTENCE**

Assistant Commissioner Entringer explained to new Board member Nancy Baerwald the purpose for having the banks amend their Articles of Incorporation to provide for perpetual existence, noting that essentially it takes one more item off the Department's annual to-do list. Assistant Commissioner Entringer indicated the Department received Articles of Amendment for perpetual existence from the following banks: CountryBank USA, Cando, and Dakota Heritage Bank of North Dakota, Hunter.

Assistant Commissioner Entringer indicated after approval of the above two banks, First Security Bank – West, Beulah; Starion Financial, Bismarck; First State Bank of Harvey, Harvey; and Bank of Minto, Minto, are the banks remaining that need to amend their Articles of Incorporation to perpetual existence.

**It was moved by Member Quale, seconded by Member Monson, and unanimously carried to approve the Amendment to the Articles of Incorporation to provide for perpetual existence of CountryBank USA, Cando, and Dakota Heritage Bank of North Dakota, Hunter.**

## **HARWOOD STATE BANK, HARWOOD – REQUEST TO RELOCATE ITS MAIN OFFICE FROM 108 MAIN STREET TO 501 DAKOTA AVENUE, HARWOOD, AND TO AMEND ITS ARTICLES OF INCORPORATION TO NOTE THE ADDRESS CHANGE AND PROVIDE FOR PERPETUAL EXISTENCE**

Assistant Commissioner Entringer reviewed his Memorandum dated June 25, 2008, noting that the application was received was received June 2, 2008. Assistant Commissioner Entringer noted there is no publication requirement for relocation of a main office.

Assistant Commissioner Entringer reviewed the statutory criteria and noted on page 7 of the application the projected increase in occupancy expenses is anticipated to be approximately \$100,000. Management is anticipating growth with the new location which would eventually cover the additional operating costs. Assistant Commissioner Entringer noted on page 4 of the application that the building will be leased as opposed to owned.

Assistant Commissioner Entringer stated the Department recommends approval of the application for Harwood State Bank to relocate its main office from 108 Main Street to 501 Dakota Avenue, Harwood.

Chairman Karsky asked President Stennes to discuss the reason for relocating. President Stennes indicated the current location, although listed as Main Street, is not really Main Street and the bank building was originally built in 1959 and has 3,600 feet, which the bank has outgrown. President Stennes indicated for the past 10 years he has been trying to secure the property where the new building is constructed; however, the owner of the land would not sell. President Stennes indicated a lease agreement was prepared since the land owner would not sell the property. President Stennes added the new building will be double in size compared to the current building, as well as the better visibility associated with the new location increasing the bank's deposit base.

Member Braseth asked President Stennes if the bank has a drive-up at its current location, and President Stennes indicated they do not; however, at the new location there will be two drive-up lanes with the ability to add a third lane.

Chairman Karsky asked President Stennes if the bank remained within its budget for the new location. President Stennes estimated they have gone over by approximately 5 to 7%.

Chairman Karsky asked what the anticipated opening date at the new location is, and President Stennes indicated approximately August 1, 2008.

Assistant Commissioner Entringer reviewed the proposed Order for the Board's consideration. Assistant Commissioner Entringer noted that proposed Articles of Amendment with the change of address, along with providing for perpetual existence, were received from the bank.

**It was moved by Member Henke, seconded by Member Baerwald, and unanimously carried to approve the request by Harwood State Bank, Harwood, to relocate its main office from 108 Main Street to 501 Dakota Avenue, Harwood; to authorize Chairman Karsky to sign the Order on behalf of the State Banking Board; and to approve the Articles of Amendment indicating the change of address, as well as providing for perpetual existence.**

President Stennes left the conference call at 9:15 a.m.

Assistant Attorney General Webb joined the meeting in the office at 9:15 a.m.

## **PROPOSED RULES FOR LOAN PRODUCTION OFFICES**

Chairman Karsky indicated the Loan Production Office (LPO) rules have been in place since 1993 and when drafted, were drafted verbatim as to what the Office of Comptroller of the Currency (OCC) allowed for national banks. Chairman Karsky continued that in the last several years the OCC has provided some liberal interpretations as far as what activities can be conducted at a LPO, and as a result we have had requests from banks that established LPOs in advance of branch applications.

Chairman Karsky indicated that Assistant Commissioner Entringer has worked on the proposed rules and will review changes with the Board.

Assistant Commissioner Entringer indicated the definitions were expanded quite significantly; previously the only thing found in this section was the definition of LPOs. Assistant Commissioner Entringer indicated the definition now explains bank funds, core banking activity, what constitutes lending money, receipt of bank funds, and who is a third party. In addition Assistant Commissioner Entringer pointed out that the definition of a LPO was changed to mean an office which is apart from the main bank, facility, or interstate branch where loans are solicited but money is not lent. The proposed change deletes references to North Dakota state-chartered banks because we have LPOs in Minnesota, South Dakota, and Arizona. Assistant Commissioner Entringer explained the reason for the proposed change in the definition is because it seemed to limit the ability to establish a LPO only in North Dakota, and since we have

authorized LPOs outside of the state it seemed logical to amend the definition to remove that limitation.

Assistant Commissioner Entringer pointed out the key to the definition of an LPO is that money is not lent.

Assistant Commissioner Entringer referred to the section for authorizations and indicated the proposed amendment is to add intrastate and interstate LPOs by a North Dakota state-chartered bank, which would make it clear that our rule authorizes interstate LPOs by a North Dakota state-chartered bank.

Assistant Commissioner Entringer explained the proposed amendment to the section on limitations states it does not prohibit the establishment of a LPO in North Dakota by banks located in other states provided the other state allows a North Dakota state-chartered bank to establish a LPO in that state. Assistant Commissioner Entringer indicated this makes it clear that it must be reciprocal in that a North Dakota bank must be allowed to establish a LPO in another state if we are going to allow that state to establish a LPO in North Dakota.

Chairman Karsky indicated this mirrors the authorization for an out-of-state bank to establish a de novo interstate branch, and if they were going to do this they would likely establish a LPO in advance of a de novo interstate branch.

Assistant Commissioner Entringer indicated the permissible activity section was amended to clear up the language that loans are solicited on behalf of a bank; however, the fifth permissible activity includes preparing applications for loans, including making credit decisions provided money is not lent at the LPO. Assistant Commissioner Entringer indicated this is a critical change in the proposed rules.

Assistant Commissioner Entringer referred the Board back to what the definition of what lending money is, which is where the borrower receives loan proceeds in person directly from bank funds either from the lending bank or its operating subsidiary, or at a facility established by the lending bank or its operating subsidiary.

Assistant Commissioner Entringer indicated the sixth permissible activity is new and addresses any other activity which does not constitute a core banking activity as determined by the State Banking Board. Assistant Commissioner

Entringer indicated a core banking activity is defined by federal law and includes lending money, cashing checks, and accepting deposits; therefore, this provision would allow the State Banking Board to determine any activity which would be permissible as long as it is not a core banking activity.

Assistant Commissioner Entringer referred the Board back to the definition of lending money which, again, states the borrower receives loan proceeds in person directly from bank funds. The definition under the fifth permissible activity is receipt of bank funds representing loan proceeds and specifically says it does not include delivery of bank funds directly by a third party, provided it does not occur at a place established by the bank or its operating subsidiary. Assistant Commissioner Entringer provided an example such as if a title company was conducting a loan closing at the LPO and the loan proceeds represented a cashier's check from the bank payable to the borrower and the title company delivered that check to the borrower at the LPO, that would constitute lending money. If however, the bank issues a check for the loan proceeds to the title company who then deposits it into their checking account and then issues a check on its account to the borrower and delivers that check to the borrower at the loan closing in the LPO that would not constitute lending money, because under the definition they are not receiving proceeds directly from bank funds. Assistant Commissioner Entringer continued that under the current interpretations the OCC would allow the delivery of a check drawn on the title company to the borrower at the LPO. Assistant Commissioner Entringer indicated another scenario is the bank could close the loan at the LPO and deliver the loan proceeds if the check is drawn on a correspondent bank, because again it does not constitute receiving loan proceeds directly from bank funds.

Member Braseth asked how it would be viewed if the bank were to simply make a credit to the borrower's account, assuming they had an account at the bank. Assistant Commissioner Entringer indicated that would not constitute lending money because they are not receiving the proceeds directly from bank funds in person.

Assistant Commissioner Entringer indicated another scenario the OCC has allowed is delivering loan proceeds via a check drawn on an affiliate bank, is not considered lending money because they are not receiving loan proceeds in person directly from bank funds.

Chairman Karsky indicated this has come up quite a bit in the last several months because of two LPOs established by BlackRidgeBANK, Fargo, and Cornerstone Bank, Enderlin, questioning what they can or cannot do at the LPO as opposed as to what is allowed for a national bank under OCC interpretations.

Chairman Karsky indicated the Department is recommending the proposed changes to keep the banks on parity with what is allowed for national banks.

Assistant Commissioner Entringer indicated a question that came up referred to where the original files for a loan had to be maintained, and asked the Board for input as to whether those files should be maintained at the bank, a facility, or could they be maintained at a LPO.

Member Monson inquired as to how loan proceeds would be distributed if it is a multiple advance line of credit. Assistant Commissioner Entringer indicated as long as they did not receive loan proceeds directly in person at the LPO they could issue a cashier's check drawn on an affiliate or a correspondent account, or funds could be wired to the borrower's account if it was maintained at another bank. Member Monson continued that is why he asked the question since he felt the original loan files should be maintained at a bank location or facility location as opposed to the LPO. Member Monson indicated he did not feel this needed to be included in the proposed amendments to the Administrative Rule.

Assistant Commissioner Entringer indicated if any of the Board members were interested in reading the Interpretative Letters or the Code of Federal Regulations he would be happy to provide copies.

Chairman Karsky added that all the Board needs to do today is authorize the Department to proceed with publication of the Administrative Rules.

Member Henke asked if this proposal mirrors the OCC as far as LPOs. Assistant Commissioner Entringer indicated that based on the Interpretative Letters, the amendments the Department is proposing does mirror what the OCC currently allows.

**It was moved by Member Braseth, seconded by Member Monson, and unanimously carried to proceed with publication and holding a hearing on the proposed amendments to the Loan Production Office rules.**

## **PROPOSED RULES FOR DEPOSIT PRODUCTION OFFICES**

Chairman Karsky indicated that previously the Department had proposed Deposit Production Office (DPO) rules and after publication the Board received public comment and opted to table the rules. Chairman Karsky indicated the original request for the DPO rules was based on a request by Kirkwood Bank & Trust Co., Bismarck, since they have a LPO in Las Vegas, Nevada, and were having difficulty trying to establish a full interstate banking facility in Las Vegas.

Chairman Karsky indicated the OCC has had DPOs for at least 5-7 years and now the Department has had additional requests from Cornerstone Bank, Enderlin, and BlackRidgeBANK, Fargo, with regard to DPOs; therefore, the Department is bringing the proposed rules back to the Board for consideration.

Chairman Karsky indicated a DPO can be located in the same location as a LPO and does not constitute a branch. Chairman Karsky stated he went back and looked at the previous rules, made some changes, and suggests they be sent out again for public comment. Chairman Karsky indicated changes were made to the DPO definition by taking out the reference to an office in North Dakota, which is apart from a North Dakota state-chartered bank's main office, so the definition would simply be an office which is apart from the bank's main bank facility or interstate branch where deposits are solicited but are not received nor are withdrawals paid or loans made.

Chairman Karsky noted the authorization permits the Commissioner or the Board to authorize the establishment of a DPO and to set forth a limitation which essentially is that it will not impair the applicant bank's capital structure, nor is there population or geographic restrictions to such offices in the state. Chairman Karsky indicated the permissible activity allows providing information about deposit products and assisting people in completing forms and related documents to open an account. Chairman Karsky continued that the content of the application includes the location, a description of the area where it is located, the proposed activity for the location, whether it will be staffed, and the nature of the compensation for the staff, a description as to the types of deposits to be solicited, as well as any other information that the Commissioner determines necessary. Chairman Karsky indicated the Commissioner has the authority to revoke the Certificate of Authority for a DPO if engaging in an activity not specifically provided for in the Administrative Rule.



Chairman Karsky stated that the banks that have established LPOs would like to have the ability to solicit deposits for these customers and with the advancement in technologies should be able to make these individuals a viable customer of the bank. Chairman Karsky added that the OCC does allow these types of activities. Chairman Karsky indicated that he expects to receive comments if the Board chooses to go ahead with this. Chairman Karsky reiterated that a national bank can do this and it only makes sense that a state-chartered bank can engage in the same activity.

Member Henke asked if the DPO rule had been proposed previously, and Chairman Karsky indicated they had.

Assistant Commissioner Entringer indicated when the previous rule was proposed the Board received comments from Citizens State Bank at Mohall, whose issue was draining deposits from local communities, as well as the North Dakota Bankers Association (NDBA) commenting that it was not clear whether the power may or should be delegated to the Commissioner, and specifically whether the proposed rule adequately accommodates public comment on a DPO application. Assistant Commissioner Entringer indicated the letter from NDBA further stated because the purpose of a DPO is to gather deposits from one area for use in another, an application for a DPO may generate both favorable and unfavorable public comment about the public interest in increased competition for deposits, and given this a specific process for notice and public comment on a DPO application may be desirable. Chairman Karsky asked what the date of this letter was and Assistant Commissioner Entringer stated it was July 20, 2004.

Chairman Karsky noted that the competition for deposits continues and Assistant Commissioner Entringer added that with the advent of remote deposit capture you can essentially gather deposits from anywhere in the world.

Chairman Karsky indicated that most of these DPOs will likely be closed as soon as they are able to get approval for and open a full service branch.

Chairman Karsky asked Member Henke if he thought we should proceed with this or table it. Member Henke inquired as to whether the Department has had much interest in this type of activity, and Chairman Karsky indicated we have. Chairman Karsky stated the two banks that are currently operating LPOs would have liked to have had the ability to have DPOs also.

Chairman Karsky added that typically when a bank wants to establish a facility it will seek permission to open a LPO so it can start establishing some relationships.

Chairman Karsky indicated he felt since the Department will publish the amendments to the LPO rules that it would not cost much more to add the DPO rules, and if we receive a lot of negative public comment we would not approve it.

Member Monson indicated he can see the thought process for people that are establishing a LPO that they would like to piggyback a DPO, because obviously you want the deposit relationship as well, adding that both of these are probably just early entrances into a market area. Member Monson continued that as Chairman Karsky indicated, the people have probably already been hired and he does not see anyone operating either a LPO or DPO for a very long time without establishing a branch.

Chairman Karsky added he does not see any of the mega banks coming into North Dakota just to gather deposits because if they wanted to they could just de novo branch into North Dakota now.

**It was moved by Member Braseth, seconded by Member Monson, and unanimously carried to proceed with publication of the proposed rules on Deposit Production Offices.**

## **LETTER FROM FARM CREDIT SERVICES**

Chairman Karsky indicated he recently testified in front of the Senate Banking Committee and criticized the mission creep of Farm Credit Services, and as a result received a letter from Farm Credit Services regarding his testimony. Chairman Karsky indicated he would like to respond and asked the Board to provide any comments regarding this letter to him. Chairman Karsky noted that one of the comments in the letter was that the mission of Farm Credit is to compete with commercial banks, adding that he thought their mission was originally to help out beginning farmers. Member Monson added their mission was also to serve the underserved rural markets.

## **PERMISSIBLE INVESTMENTS FOR STATE-CHARTERED BANKS**

Assistant Commissioner Entringer indicated there are a couple issues specifically related to State Bank & Trust, Fargo; First State Bank, Buxton; and Bank Forward, Hannaford, with the latter two banks investing in a limited liability company called The Angel Fund, Grand Forks. Assistant Commissioner Entringer indicated The Angel Fund loans money to developing corporations and the fund that State Bank & Trust, Fargo, would like to invest in is a technology center at NDSU, which is also an LLC. Assistant Commissioner Entringer stated the difference with NDSU is that the funds will be used to build two buildings which will be used to house developing companies that will work on technology, etc. Assistant Commissioner Entringer indicated we have researched these to try to determine if they are permissible investments. Assistant Commissioner Entringer indicated the OCC recently issued its publication detailing permissible activities for national banks and one of the permissible investments is to acquire a non-controlling minority interest, including LLCs, in business entities if the entity engages in activities that are limited to those that are part of or incidental to the business of banking, and the bank can prevent the company from engaging in activities that are not part of or incidental to the business of banking, or to be able to withdraw its investment; and the national bank's loss exposure is limited, it must not have an open-ended obligation or liability for the enterprise; and the investment is convenient and useful to carry on the business and is not a mere passive investment unrelated to the national bank's banking business. Assistant Commissioner Entringer stated in the publication they provide several examples, including making loans to or investments in medium to small sized businesses, providing that the national bank does not acquire a controlling interest in the LLC. Assistant Commissioner Entringer indicated that in all the cases the Department is looking at our banks will not have a controlling interest and their investments are fairly nominal; for The Angel Fund the two banks involved have committed to \$30,000 each, and State Bank & Trust, Fargo, may go up to \$500,000. Assistant Commissioner Entringer indicated we are asking the Board to consider whether they think the investments fit within the definition as outlined as permissible for a national bank; if the Board deems it is permissible then a letter will be sent to each of these banks indicating it is permissible because it is authorized for a national bank.

**It was moved by Member Monson, seconded by Member Quale, and unanimously carried to authorize the investment in The Angel Fund by First State Bank, Buxton, and Bank Forward, Hannaford; and also to authorize**

**State Bank & Trust, Fargo, to invest in the LLC for the NDSU Technology Center.**

The Board went into closed session at 9:53 a.m.

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Timothy J. Karsky, Chairman

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Robert J. Entringer, Secretary